

JERSEY / JUDGMENT

# Representation of Abdallah

## [2021] JRC 249 (05 October 2021)

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### judgment

DEPUTY BAILIFF: 1. On 31 st August 2021, at an adjourned hearing of the Representation, we heard evidence in this matter. Originally, we were invited by the parties to determine the application on the affidavit evidence. This we were unable to do owing to the conflict of evidence between the deponents. It would have been impossible to resolve that conflict without the witnesses in question being cross-examined.

### Background

2. We summarise the undisputed background to this matter, the principal contentions of the parties; our findings in respect of the evidence, and then apply the law, as we understand it, to the facts that the Court has found. 3. The Representer, Mr Abdallah, seeks an order under Article 155 of the Law that the Company be wound up by the Court on the basis that it is just and equitable to do so and that, ancillary to that order, the Court appoints a liquidator and gives such further directions as are appropriate. This application is contested by the Company. 4. The Company was incorporated in Jersey under another name on 6 th January 2006. 5. Mr Abdallah is an English property lawyer who is a Lebanese and a British citizen. He met Mr Rubie in 2003. Mr Rubie was an engineer with business interests in Qatar. In late 2005, Mr Rubie said he was moving to Qatar and asked Mr Abdallah if he was interested in investing, using the word 'partnering' , in Building Systems Integration ("BSI"), a Qatari company. 6. Ultimately, Mr Abdallah made an investment of funds in 2006 in the sum of £82,000, equating to 525,000 Qatari Riyal, representing, what he understood, to be 10% of the shares in BSI. Later in the year, he transferred a further sum which he understood to represent 5% of those shares. He made two further payments in 2016 and 2017 which were, it seems, recorded as loans. In any event, the total sum invested into BSI by Mr Abdallah was £208,128. 7. Although Mr Abdallah believed that he was investing directly in BSI, in fact he was subscribing for shares in the Company which was established for the purpose of holding shares in BSI. 8. Mr Abdallah's belief that he was subscribing for shares in BSI, as opposed to shares in the Company, led to Mr Abdallah initiating Court proceedings in Qatar against the Company, BSI and Detco in 2008, that were concluded in 2010 with Mr Abdallah's claims being rejected by the Qatari Court. The litigation soured relations between Mr Abdallah and

the other shareholders. Detco is the shortened name of a Qatari company known as Doha Energy and Trading Company. 9. In fact, the Company owned 49% of the shares in BSI. 51% were owned by Detco. At the relevant time, Qatari legislation prevented foreigners from owning more than 50% of the shares of a Qatari company. In those circumstances, it was common for there to be a Shareholders' Agreement which better reflected the economic reality of the situation, i.e. that the foreign investor was providing most of the assets and, accordingly, would be entitled to the lion's share of the rewards if the investment was successful. The Shareholders' Agreement was agreed on 2 nd June 2006 between Detco, Greyhound Electromechanical Limited (an English company and the original owner of the Company), the Company and BSI. The Shareholders' Agreement 10. The Shareholders' Agreement provided, inter alia, that the Company had made loans to Detco, including a loan to Detco representing the subscription to acquire Detco's 51% shareholding in BSI. 11. Detco agreed that the Company would be entitled to manage BSI, including appointing Mr Rubie as general manager of BSI. The agreement provided that Detco was required to assist BSI in obtaining all necessary regulatory requirements in Qatar. 12. BSI agreed to pay to Detco 1% of its total yearly income in consideration for the services it provided. Such payment was in lieu of any dividends and distributions relating to its shareholding in BSI. Detco was obliged to repay the Company all sums loaned to it, save in the event that BSI was dissolved, or the Company transferred its shareholder rights wholly, or in part, to Detco. 13. Detco appointed the Company as proxy to attend all shareholder meetings of BSI and to vote Detco shares accordingly. The Company was entitled to all dividends. The agreement was to continue so long as both Detco and the Company remained shareholders in BSI. 14. Importantly, the Company undertook to release, and always keep, Detco indemnified from any monies that it had to pay to any third party arising from its shareholding. 15. Accordingly, pursuant to the Shareholders' Agreement, the Company was to enjoy the rewards but also bear the risks consequent upon its shareholding and the shares held by Detco too. The fortunes of BSI 16. Although BSI continues to trade to this day, it has been beset by financial difficulties. 17. It is not necessary to particularise all these problems for the purpose of this judgment. The difficulties included various additional funding rounds pursuant to which shareholders were invited to introduce further capital. Mr Abdallah did not participate in the later funding rounds and his shareholding was, accordingly, diluted. By 1 st January 2012, Mr Abdallah's shareholding had been reduced to 8.2%. 18. Mr Abdallah says that BSI was a Company with a bright future - its revenue more than doubling between 2009 and 2012; reporting a profit in the three of the four accounting years between 2009 and 2012, with significant investment and capital expenditure throughout and a positive net asset value. 19. The Company paints a quite different picture of a fundamentally loss-making business which is only kept alive by capital/loan injections from its shareholders. 20. In 2010, a company called Bright Vision offered to purchase the Company's shares in BSI for QR 17 million. The sale fell through. The Company said that was owing to a misplaced intervention by Mr Abdallah. This is disputed. 21. In August 2011, Andium, a service provider in Jersey, withdrew its authorisation for its registered office to be used as the registered office of the Company. From approximately this point onward, Mr Mirza, the

principal witness for the Company, was its sole director. 22. By this time, in addition to its shareholding in BSI, the Company had loaned QR 5.9 million to BSI and QR 4.692 million to Detco . 23. In mid-2011, Mr Mirza provisionally agreed to buy Mr Abdallah's shares for £500,000. The draft sale agreement foundered on the question of warranties, which Mr Abdallah was not prepared to give. The fact that Mr Mirza was prepared to pay this sum for Mr Abdallah's shares is evidence, so far as Mr Abdallah is concerned, that his shares had and still have a positive value. 24. There was an EGM of the shareholders of the Company on 19 th November 2011. The meeting was chaired by Mr Mirza who sought authorisation to sell the Company's shares in BSI for not less than QR 18.3 million. The minute records that the resolution was approved by 91.78% of the shareholders. The only shareholder to vote against was Mr Abdallah. By this time, Mr Mirza was also the main shareholder in the Company, having invested a further QR4,740,000 into the Company and having received a transfer of shares from another shareholder, Greyhound BVI, at some point during 2011. 25. At about this time, and for the purpose of consideration of the sale of the shares in BSI, BSI was valued by Deloitte Financial Services UAE. We will return to this report when we review the evidence. 2013 - the transaction 26. On 8 th June 2013, Mr Mirza sent an email to all shareholders reporting on the financial situation of BSI, which he said had deteriorated. This email was important, and it was sent by Mr Mirza to the three other principal shareholders of the Company including Mr Abdallah. It was entitled 'BSI Return Cheques' . The email referred to BSI's previous losses and said that attempts to arrange a bank loan had been unsuccessful. He added 'BSI account payables have worsened; currently BSI Steel has QR 6 million of return cheques' . 27. The evidence of Mr Mirza was that to dishonour a cheque has severe consequences in Qatar and may amount to a criminal offence. The email said that two weeks before Saad Al- Jassim (the beneficial owner of Detco ) bought a serious matter to his attention, namely that the financial situation in which BSI had found itself 'put us in legal risk' . He said 'This concern is particularly pertinent to Mr Saad Al- Jassim / Detco , the local partner and guarantor and Mr Kadem Rubie, signatory of the cheques. Issuing cheques without sufficient funds is grounds for legal action up to and including imprisonment' . In response, Mr Al- Jassim had instructed Mr Rubie to cease issuing post-dated cheques. This had had a direct impact on BSI's day-to-day operations which could lead to a halt in the plant's production. Mr Mirza said that this matter could only be 'relieved by an immediate injection of additional funds to close the bank deficit from all shareholders'. He went on to say that all offers received had been significantly less than QR 18 million and the situation of the Company had 'deteriorated' to the point of being 'unacceptable' to Detco . 28. What happened next is the matter of substantial dispute and is at the core of Mr Abdallah's complaint. 29. What is not in dispute is that, at some point in the middle of 2013, Mr Mirza transferred the Company's shareholding in BSI to Detco , thus bringing the Shareholders' Agreement to an end. At the same time, the loans in favour of the Company, both to BSI and to Detco , were forgiven/written off. 30. No contemporaneous documentation of this transfer exists and in Mr Mirza's first affidavit, sworn on 14 th July 2020, he says that he has been unable to locate contemporaneous documentation relating to the approval of the Transaction (his omnibus term describing the transfer of the shares to

Detco and the writing off of the lending and associated transactions). He says, in paragraph 29 of his affidavit, that 'it is my recollection that the decision was taken in or around May 2013 or June 2013 and had majority shareholder support at the time'. There is no email correspondence to the other shareholders who apparently agreed with the Transaction. Mr Mirza said that Mr Abdallah was fully aware of the Transaction at the time, which Mr Abdallah rejects. 31. After the Transaction took place, Mr Mirza allowed the Company to be struck off in October 2013 (it having no registered office or company administrator in Jersey, due in part to Mr Abdallah's failure to provide due diligence). The Company was subsequently restored to the register on Mr Abdallah's application on 11th May 2019. It was only, Mr Abdallah says, on receipt of the letter from the Company's Jersey advocates dated 20th September 2019, that he became aware of the fact that the Company had transferred its shareholding in BSI to Detco before the Company was dissolved. The principal contentions of the parties involved Mr Abdallah 32. Mr Abdallah relies upon various communications between himself and Mr Mirza in 2015, 2016 and 2017, the tenor of which suggested that the Company still owned 49% of BSI. 33. It was said on behalf of Mr Abdallah (for example in his advocate's letter dated 28th November 2019) that the transfer of shares, if carried out after 1st October 2013, would have been void owing to the dissolution of the Company. If carried out prior to that date, there was no evidence of Mr Mirza complying with the relevant Articles of Association of the Company, including the provisions requiring a director with an interest in the Transaction to disclose any conflict - Mr Mirza had a clear conflict in that he had substantial dealings with BSI in his own right, including debts owed by BSI to him personally. 34. Mr Abdallah argues that the Transaction was affected without professional advice. Mr Abdallah was not informed about it before it took place, or after it took place. This is indicative of bad faith on the part of Mr Mirza. The Company's shares in BSI were of value. This, it is said, is supported by expert evidence, both contemporaneous evidence and evidence obtained for the purpose of these proceedings. In particular, a report from BDO shows that the shares in BSI had value at the time of the Transaction. The forgiveness of the debt of BSI is not explained and not understood. Mr Abdallah was not told about the Company being struck off and ought to have been. The correspondence from Mr Mirza in 2016 and 2017 showed that Mr Mirza was deliberately attempting to conceal the Transaction from Mr Abdallah. 35. This is said to be a case where there is a need for an investigation of the Company's affairs. The principal asset of the Company has been given away; the Court has a wide jurisdiction to order a just and equitable winding up under Article 155 and that jurisdiction is fully engaged on the facts of this case. 36. Mr Abdallah has identified a liquidator, KPMG, which has agreed to its appointment on the basis of agreed funding of £15,000 plus disbursements in order to commence work. The Company says that no liquidator should be appointed - the Company has no assets and such a step would be pointless. They say that Mr Abdallah has breathed life into a company that has no assets. To the extent that there were defects in the 2013 EGM, the Company has cured, or purported to have cured them, by an EGM on 18th August 2020, again chaired by Mr Mirza, at which the shareholders in the Company, with sight of the allegations made by Mr Abdallah in his Representation and his first affidavit, authorised, approved, consented to and ratified the

2013 Transaction, including the transfer of the shares and the abandonment of the loans. The shareholders voted at the EGM on 18 th August 2020 - three in favour and one (Mr Abdallah) against. Mr Mirza did not vote. The Company 37. The Company, which called Mr Mirza and Mr Rubie to be cross-examined, says that Mr Abdallah had lost interest in the Company at the time of the Transaction. Nonetheless, he knew that the Company was in extreme financial difficulty and that one of the options open to it was the transfer of its shares in BSI to Detco . It was argued that Mr Abdallah's view of the value of its investment in BSI was misplaced and inconsistent with those who knew better - Mr Mirza as sole director of the Company and Mr Rubie who was running BSI at the time. BSI was in breach of Qatari legislation, including Article 290 of the Commercial Companies Law, which requires a company with accumulated losses in excess of 50% of its capital value either to dissolve itself or increase its capital. This, and the writing of post-dated cheques that were not honoured risked criminal and civil liability to those on the ground in Qatar. 38. By the end of 2012, the short-term liquidity issues of BSI had become critical - Mr Abdallah was not prepared to assist with funding. The BDO report portrays a more rosy view of BSI's value in 2013 than is reflected by the reality, as illustrated by the expert evidence obtained by the Company for these proceedings. 39. It is argued that there was nothing wrong with the EGM in 2013 - the Company had very little option but to do as it did and any technical defects were cured by the ratification of the decision of the 2013 EGM by the shareholders in 2020. 40. As to just and equitable winding up, there is no valid reason for the Company to be wound up, other than by way of a summary winding up. This is not a case of the Company losing its 'substratum' - there is nothing to wind up as the Company has no assets and this application, particularly the liquidation envisaged, would achieve nothing. Not only does the Company have no assets, but the budget that Mr Abdallah offers is far too small and any claims would likely be governed by Qatari law upon which no expert evidence has been adduced. In any event, if there was a realisation then Mr Abdallah would receive only 8.2% of it. Accordingly, the application is pointless. The evidence of the parties 41. Mr Abdallah was the first witness to be cross-examined on the affidavits that he had sworn. Mr Abdallah said that he agreed not to appeal the Qatari judgment against him in 2010 (which had held that his shares were in the Company and not directly in BSI) by virtue of a settlement agreement pursuant to which, inter alia, Mr Rubie agreed to transfer 655 shares in the Company to him. The purpose of the increase in shareholding was, he said, to increase his shareholding from 9.7% to between 12 and 13%, but he accepted that subsequent funding rounds to which he did not contribute diluted his shareholding to 8.2%. He accepted that the Shareholders' Agreement was governed by Qatari law, although he thought it was drafted by a Jersey law firm. He accepted that under the Shareholder's Agreement, only 4% of the profits, if any, made by BSI would go to Detco , but Detco would be insulated from any liabilities of BSI. 42. Mr Abdallah's evidence that BSI was still trading successfully, now under the ownership of Mr Saad Al-Jasmin (the beneficial owner of Detco who had at some point had the shares in BSI transferred to him personally) was challenged. Mr Abdallah's evidence was that BSI's accounts for year end 2012 showed positive partners' equity of just over £1 million. 43. As to Mr Mirza's concern about returned cheques, Mr Abdallah's evidence was that it was not

unusual for issued cheques to be returned; it was common practice in the Middle East and not a serious matter involving potential criminal liability which the Company's witnesses had suggested. Mr Abdallah was taken to the report by Ernst Young, dated 28 th November 2020, prepared on behalf of the Company for these proceedings. This showed the position of the Company in June 2013. The bank statement of the Company showed a number of returned cheques. Forty-nine cheques were identified; forty-eight of which had been returned with a total value of QR 5.67 million. The cheques were dated between February 2012 and May 2013 and related to twenty-five different suppliers/payees. 44. Mr Abdallah said this was partly a function of the model being operated by BSI at the time. He said that he was subsequently told that the model had changed and the business was no longer being operated on a credit basis, but a cash basis with all those who made orders of BSI (which fabricates steel products) required to pay cash up front before goods were delivered to them. 45. When it was suggested to him that the email to all shareholders dated 18 th October 2011 from Mr Mirza writing on behalf of the Company showed that, notwithstanding the additional contributions made by shareholders, the Company was still in financial difficulty, Mr Abdallah said that as far as he was concerned this was in part a consequence of the Company's substantial investment in a new 14,000 square metre factory. 46. In Mr Abdallah's reply to an email written by Mr Mirza at about this time, he said that he had intended to broker a deal for sale of the Company's shares in BSI for QR 122 million, resulting in a payment to him of QR 22 million. The potential buyer was the biggest steel fabricator in the Middle East. There was evidence given about this by both Mr Abdallah and Mr Mirza which, in our view, took matters little further. 47. As to the Bright Vision offer in 2010 for the shares, an email from August 2010 showed that Bright Vision had written to the Company in relation to Mr Abdallah's conduct. He had telephoned the potential buyer introducing himself as a lawyer residing in the UK and a shareholder in the Company and had gone on to allege that the management of the Company was guilty of carrying out a 'fraudulent' transaction, and that the Qatari Court decision was due to be issued soon with a high chance of success in his favour. Bright Vision were concerned that this information might put their investment at risk. 48. In our view, this was an unfortunate telephone call for Mr Abdallah to have made and may have caused Bright Vision to pull out of the potential purchase, although there was other correspondence shown to the Court which supported Mr Abdallah's case that Bright Vision pulled out owing to an absence of clarification of certain matters relating to taxation. 49. It is not necessary for us to reach a finding on this particular issue, but this particular action taken by Mr Abdallah appears to have hardened the attitude of Mr Mirza and perhaps other shareholders against him and, in our view, was one of the factors leading to the decision to exclude Mr Abdallah from the discussions relating to the Transaction in 2013. 50. Mr Abdallah accepted that in 2011 the board agreed to a sale, notwithstanding his objections to the same. 51. A time came when Mr Abdallah paid less attention to matters relating to the Company, but in 2015 he discovered that the Company had been dissolved. Earlier, he had received a notice from the Jersey Companies Registry to the effect that the Company might be struck off and Mr Abdallah said that at that point he was told he had ten years to reinstate the Company. 52. Mr Abdallah appeared to not have been unduly worried about the fact that

the Company was dissolved. He knew it could be reinstated and had no reason to believe, on his evidence, that the assets of the Company had been given away in 2013. 53. Mr Abdallah rejected the assertion that Mr Rubie had told him that it was possible that the Company's shares would be given to Detco prior to this happening. Mr Abdallah rejected the suggestion that in a phone call in 2013, Mr Rubie told him that in view of BSI's dire financial predicament and the exhaustion of all efforts to locate a buyer, that the Company had no option but to surrender its shares to Detco. Mr Abdallah accepted that he did speak to Mr Rubie in 2013 about his shareholding, but not in the terms that Mr Rubie suggested. He also rejected the assertion that Mr Rubie had told him in a subsequent call in 2015/2016 that Detco was the sole owner of BSI. 54. When he gave evidence, Mr Mirza said that there were negotiations between himself and Detco about the terms of the Transaction. He said that those negotiations were recorded in manuscript notes that he had lost. He said that there was a written agreement between the Company and Detco which may have been typed and, again, had been lost. Mr Mirza's evidence regarding the Transaction is summarised at paragraphs 26, 27, 30 and 31 above. 55. As to the meetings that took place in Doha in 2016, Mr Abdallah said that the discovery that the Company had been struck off led him to make contact with Mr Mirza. Much was made of the correspondence between Mr Abdallah, Mr Mirza and Mr Rubie in 2015 and 2016. 56. On 11 th November 2015, Mr Abdallah wrote to Mr Mirza and Mr Rubie by email. He said 'I would like to travel to Qatar and meet with you in order to discuss the lack of updates, accounts and position and BSI Steel or in the alternative, if you could let me know when you are next in London so that we can meet and discuss. I would also like to proceed with the sale of my interest in BSI Steel'. Mr Rubie replied the following day to the effect that he was having some treatment in Doha but would be in London by th November. There was no suggestion in the email that Mr Abdallah no longer had an interest in BSI because the Company has disposed of its shareholding in 2013. After another exchange of messages, Mr Rubie suggested a meeting between Mr Abdallah and Mr Mirza in Doha on 28 th February 2016. They eventually met on 27 th February 2016 at the Four Seasons Hotel, Doha. 57. Mr Abdallah's account of the meeting is, in effect, recorded in his near contemporaneous email sent to Mr Mirza and Mr Rubie, two days later, on 1 st March 2016. Mr Abdallah said that at the meeting Mr Mirza had explained that the BSI factory was: "...losing money beyond control and the company is on the verge of collapse. You also explained that the only reason the company did not proceed to liquidation is because Detco have signed cheques together with Mr Cadem Rubie and as a consequence, you always have to top up the company with funds. You also informed me that you own 33% of the company and that Mr Cadem Rubie owns the majority stake in the company. You advised me that the turnover last year was 113 million Riyal and that this year is 98 million Riyal. You further informed me the company is achieving an average of 800 tonne fabrication each month on average. In addition, you informed me that the Qatari development bank insists on all the shareholders signs any loan agreements and this change set a blow back to the factory continuity". 58. The email went on to say that Mr Mirza was still trying to sell BSI. Mr Abdallah added: "At the meeting you referred to my share equal to 9.22% which I confirmed that I disagree with at the meeting and hence my reluctance to

communicate through the Jersey company. I reminded you that I have reached a settlement agreement at 13% stake through Greyhound if you recall. As you know, you have not provided me with the account since 2010, I therefore requested management accounts and audited accounts for the last 5 years. I look forward to receiving your confirmation that I understood correctly on reflection of the above and confirmation of date to release the accounts for the last five years." 59. Mr Abdallah said that the day after the meeting with Mr Mirza, he went to the BSI factory and met the son of another of the shareholders of the Company who gave him a tour of the factory and told him that the business was 'booming', and that the factory now operated on a cash account orders basis only, meaning that there was no need for BSI to manufacture goods and then wait for the orders to be collected and paid for. 60. Mr Mirza failed to respond to the email from Mr Abdallah, even though the email sought a response and contained a detailed record of what occurred at the meeting. 61. Mr Mirza said that, by the time of the meeting in Doha in 2016, Mr Abdallah was 'aware of the Transaction'. This evidence we reject as it is inconsistent with all the contemporaneous written documentation. 62. As to the email of 1 st March 2016, Mr Mirza said that Mr Abdallah 'made a concerted effort to mis-record and mis-characterise to suit his purpose'. He points to the suggestion in the email that he owned 33% of BSI which is simply wrong and was never the case. Whilst that is true, Mr Mirza, having agreed to meet Mr Abdallah in Doha, failed to respond to the email of 1 st March 2016, still less write to Mr Abdallah to the effect that what he had said in his email was almost exclusively a work of fiction. Further, he did not respond to WhatsApp messages that we were shown, in March 2016 in which Mr Abdallah chased up the BSI accounts. Mr Mizra simply ignored the requests from Mr Abdallah. 63. Mr Mirza's explanation in evidence, when he was cross-examined, about his willingness to meet Mr Abdallah and the contents of his correspondence was unconvincing. He said that the reason he agreed to meet Mr Abdallah, and corresponded in the way he did, was because BSI was 'open to new investors' and he saw Mr Abdallah in that light. 64. This was an improbable explanation. It was inconsistent with the correspondence; inconsistent with Mr Abdallah's note of the meeting, and inconsistent with the fact that Mr Mirza and the other shareholders plainly viewed Mr Abdallah as a troublemaker. There was no reasonable basis upon which they would wish him to invest again in the business. He gave no satisfactory answer as to why he did not simply tell Mr Abdallah that he no longer had an interest in BSI. 65. Furthermore, although Mr Mirza never replied to Mr Abdallah's email of 1 st March 2016, he did draft a reply to send, which he sent in draft to Mr Rubie for his consideration on 16 th March 2016. 66. That reply began 'Dear Nasser' and said the following: "We had discussion which was unofficial as I have no documentation to support the numbers particularly matters related to old issues. Our discussion was off the records. For your information, I have no official capacity in the local entity. The main issue of today's situation, the Company is going through major financial crisis. I shared with you the current liabilities of the company that I am aware off [sic]. The company is at risk of going into liquidation. If anyone interested wished to confirm a share in the company, I am willing to discuss the matter with local Qatari company. However I will only approach the local Qatari company if the interested party is committed to take full

liability of his share in profit and / or losses. I am only assuming the local company would like to have the commitment in a bank guarantee for or any other financial supporting method. This could be mutually agreed later." 67. What is interesting about the draft reply is it indicates, firstly, contrary to Mr Mirza's protestations, that he appeared to have a continuing role in respect of the affairs of BSI, and held himself out as being empowered to communicate on behalf of the Company. Secondly, there was no mention in the draft reply either of any inaccuracies in Mr Abdallah's email (contrary to his evidence to us that it was almost entirely made up) and, again, no suggestion in the email that Mr Abdallah no longer had an interest in BSI, either via the Company or at all. 68. There were WhatsApp exchanges between Mr Mirza and Mr Abdallah in 2017 of little relevance so we do not summarise them. 69. As to Mr Mirza's evidence that he had had nothing to do with BSI since the sale of the Company's shares, our attention was also drawn to a press article from January 2019 in respect of various Qatari businesses in the oil and gas sector. The article concerned the Axis Engineering and Mechanical Company of which Mr Mirza was general manager (the article calls him managing director). The Axis website showed that its activities included processing steel building projects and its 'partners' included 'BSI Steel', i.e. BSI. Although we made no finding in this regard, we had doubts about Mr Mirza's protestations that he had no commercial connection with BSI in circumstances where he was drafting letters on behalf of BSI in 2016 and identifying his current business as 'partner' of BSI as recently as 2019. Furthermore, although the loans the Company made to BSI were abandoned/forgiven, Mr Mirza still has an outstanding loan to BSI of QR 1.95 million which remains liable to be repaid in due course if the circumstances of BSI allow. Mr Mirza also confirmed that other former shareholders in the Company have outstanding loans to BSI. 70. Mr Rubie now lives in London and was Chief Executive Officer of BSI between 2005 and 2016. He was the final witness to be cross-examined. He had known Mr Mirza since 1990 as a family friend and also knew Mr Haider, another shareholder, and had known him since 1980. He accepted that he had introduced Mr Abdallah to BSI and suggested he invest in 2005/2006. He had known Mr Abdallah as a lawyer who used to conduct property transactions in which he was involved in London. He said that running BSI was 'not a smooth ride'. He said he had to leave Qatar in 2016 because of the post-dated cheques that he signed which had not been honoured. 71. He denied being a shareholder in the Company and denied having ever represented the Company. He accepted that the major shareholder for much of the time in the Company had been Greyhound which was owned by his nephew. He knew that his nephew had the majority shareholding in the Company, until that shareholding was transferred to Mr Mirza. He said he knew all the shareholders in the Company (there were never more than about five) but denied that his nephew was his nominee. 72. He was directed to documentation which showed that in March 2011 he had agreed to transfer certain shares from Greyhound to Mr Abdallah and he had done so on the basis that Greyhound was legal owner of the shares and that he was 'controller' of the shareholder. He had signed the stock transfer form on behalf of that company. Mr Rubie accepted that the signature was his and that he had been authorised to sign the document on behalf of his nephew. 73. As to the conversation that he claimed to have had with Mr Abdallah in 2013

before the Transaction, Mr Rubie was vague about the date. This is unsurprising perhaps as there is no documentary evidence that the conversation took place. He said that he told Mr Abdallah that 'everyone would lose their shares'. He said that Mr Abdallah was swearing and threatened to take him to court. He said he could not remember whether the conversation was in December, February or June. Later, in his evidence, he said that he thought the conversation was in May and June. His oral evidence was not, so it appeared to the Court, particularly consistent with the affidavit that he had sworn to the effect that he had told Mr Abdallah that the Company 'had no option but to surrender the BSI shares to Detco'. 74. As to the subsequent email communication with Mr Abdallah in 2015, by which time Mr Rubie said he thought Mr Abdallah had no interest in BSI, he explained his failure in email to say to Mr Abdallah that he had no such interest by reference to the fact that he believed Mr Abdallah was already fully aware that the Company had no interest in BSI as he had communicated that clearly to Mr Abdallah in 2013. We were very unsure of the evidence of Mr Rubie and did not find him to be a convincing witness. We were unimpressed by the fact that he signed a document purporting to be the 'controller' of Greyhound when he knew that he was not, and this was at a time when he was CEO of BSI. 75. As to Mr Abdallah, his evidence was plainly coloured by years of antagonism towards Mr Mirza and he was easily roused to anger. Nonetheless, we accepted his evidence showed that there had been a sustained move to exclude him from the business of the Company, and that he had not been told about the Transaction at the time, nor had he discovered it until 2019, and that he was actively misled in 2015/2016. 76. We found Mr Mirza to be evasive in his response to questions. We were unimpressed that the sole director and main shareholder, on his own evidence, appears to have had a poor/non-existent filing system in respect of one of the most important decisions ever made by the Company, i.e. the relinquishing of its only asset to Detco in 2013. The valuation evidence 77. The most contemporaneous valuation was the Deloitte 2011 report. Deloitte were the auditors to BSI at the time, but the report was designed to interest a bidder for the shares in BSI. The report showed that BSI was the only designer and manufacturer of steel PEBs (pre-engineered buildings) in Qatar. Accordingly, it enjoyed a significant cost advantage compared to imported PEB products. At that time, Qatar had the world's fastest growing economy. The factory was new with a high capacity and 171 highly trained full-time staff. Mr Rubie told us that today there are 190 to 200 staff. 78. The Deloitte report did provide an explicit value for the business but identified key 'value considerations'. In summary, the valuation said that on a 'pre-money' basis, assuming no upfront equity injection by an investor, BSI was valued at \$8 to \$10 million. A 'post-money value' assumes an equity injection by the investor of \$9 million, with the external investor playing a significant role in the business. This gave the value of the business as just over \$43 million. As far as Deloitte was concerned, the factors referred to above were relevant, in producing this valuation - namely its position in the Qatari market, Qatar's growth and the company's capacity to accommodate further growth. 79. The BDO report obtained by Mr Abdallah for these proceedings said, in addition to the matters referred to at paragraph 34 above, that BSI's positive cashflow position in 2012 was not consistent with Mr Mirza's characterisation of an 'obviously failing business'. BSI engineered pre-engineered steel

buildings, an asset intensive business. It undertook a significant capital expenditure between 2006 and 2009 and incurred some capital expenditure between 2009 and 2012. That spending was designed to drive growth and enhance the value of the business. BDO say that Mr Mirza's characterisation of 'loans' to BSI as liabilities of the Company was inaccurate as Deloitte treated those sums as contributions to equity. BDO regard the description adopted by Deloitte as an accurate one. The loans were interest free and had no repayment terms and the "lower bound value" of BSI would be its net assets of QR 6.3 million as at 31 st December 2012. 80. Ernst Young, on instruction direct by Mr Mirza, said that the 2012 financial statements for BSI showed that its current liabilities exceeded its assets as at 31 st December 2012. This raised doubts about the company's ability to continue as a going concern. 81. Ernst Young expressed concern about the dishonoured cheques, to which we have already referred, and the provisions of the Qatar Commercial Companies Law, already referred to, which provide that if a company's losses exceed 50% of the capital of the company then the shareholder(s) should dissolve the company or increase its capital. 82. Ernst Young expressed the view that BSI's trading history from 2008 to 2012 was indicative of an inability to pay its debts in the short-term when they fell due in the absence of additional funds. Reference was made to Mr Mirza's 8 th June 2013 email and accompanying information, together with the reference to the bounced cheques referred to above. Ernst Young concluded their review on BSI's financial health, as at 21 st December 2012, by saying that the company was 'just about surviving' at that time. Between that time and 30 th June 2013, the company's financial situation deteriorated further and, having regard to the contents of Mr Mirza's 8 th June 2013 email, BSI was unable to trade as before. Ernst Young described BSI's financial situation by the end of June 2013 as 'precarious, ....four of its six credit facilities were in arrears.... cheques were bouncing, and it could no longer use the PDC (post-dated cheque) mechanism to trade'. The author of the Ernst Young report says 'My view, is that ultimately, in mid-2013 and as set out in Mr Mirza's bleak email, Mr Saad became exasperated with the situation and declined to cooperate any more given (a) the inability of [the Company's] shareholders to inject more funds, and (b) that he was the individual (a Qatari national who had issued guarantees in support of BSI's borrowings) who was most exposed to the problems caused by BSI's lack of liquidity and the serious consequences arising from the bounced cheques. In other words, and notwithstanding the reported profit of QR 2 million in 2012, this was a case of too little, too late' . 83. As to the Deloitte valuation, the author of the Ernst Young report says that the valuation figures were 'at best of academic interest only' . 84. In BDO's reply, BDO agreed with the Ernst Young conclusion that, inter alia, BSI's ability to continue as a going concern was dependent upon future profitable operations and the financial support of its partners, and that the entity had accumulated losses and net current liabilities. However, BDO did not accept that these conclusions implied a nil value for BSI. BDO say that it is not unusual for a company to require the support of its shareholders in the short-term in order to continue as a going concern. The requirement for such support does not imply that the company has a nil value. BSI had positive net assets for all periods under review. BDO rejected the assertion that the contemporaneous report from Deloitte from 2011 was of academic interest as it was

important to have evidence in 2011 from a professional adviser who was familiar with BSI, having audited it during the period in question. 85. BDO opine that taking all the evidence together, as at 2012, BSI had a value range of between QR 6 million and QR 25.5 million - a multiple of between 3 and 13 times the net profit of QR 2 million at year end of 31 st December 2012. BDO say that the market value of BSI would have been at least equal to its net asset value. Further, its value on a going concern basis would have been higher than its net asset value, as a hypothetical purchaser of the company would have assessed its market value based on its appraisal of its forecast performance and potential for future business, net of any additional funding required. Having regard to the increase in revenue of BSI over the years 2006 to 2012 (there was a consistent increase every year), the value of the assets of the business, the fact of the Bright Vision offer, and the Deloitte valuation, BDO concluded that BSI had a positive value in June 2013 which was significant. 86. We accept the submission made on behalf of Mr Abdallah that it was not necessary for him to prove the value of the business in 2013 at this stage, merely that it was significant. The law 87. The law in this area was recently reviewed by the Royal Court in *Financial Technology Ventures and Others v ETFS Capital Limited and Graham Tuckwell*

[2021] JRC 025 . The Royal Court said this at paragraph et seq : "47. It is not possible exhaustively to define all of the circumstances when it may be just and equitable to order the winding up of a company. The Court has a wide discretion and each case must be assessed on its own merits. Common examples of where just and equitable winding up has been ordered by the court include where the substratum of a company has gone, where a company is insolvent and its affairs need to be investigated, where there is a deadlock between the members and / or directors preventing decision making on matters central to the company's prospects and where, if the company is a quasi-partnership, there has been a breakdown of relations between the participants such that they are unable to cooperate in the conduct of the company's affairs. As noted by the Royal Court in *Re Leveraged Income Fund Limited*

[2002] JRC 209 , Article 155 is based upon several provisions of the UK Companies Act and accordingly English authorities are often of assistance. 48. The Plaintiffs in this case have indicated in the course of argument that their principal remedy is to have their shares purchased at fair value and without any minority discount on the grounds that they have been unfairly prejudiced by the conduct of Mr Tuckwell, and that they seek winding up of the Company in the alternative. Mr Tuckwell argues that it is quite wrong to wind up the Company on the facts of this case. He drew the Court's attention to the decision of *Mummery J In Re A Company (No 314 of 1989)*

[1991] BCLC 154 at 161, when he described winding up as a "death sentence". This remark was quoted with approval by Lord Hoffmann in *O'Neill* ." 88. In the Court of Appeal in the same case

[2021] JCA 176 , Crow JA, giving the judgment of the Court, added the following: "268. There is a considerable degree of overlap between the legal principles applicable to the court's power to grant a winding-up order on the just and equitable ground, and the court's power to grant relief in respect of unfair prejudice. Nevertheless, there are some significant differences. Most importantly, a plaintiff does not have to demonstrate unfair prejudice to his interests as a member in order to persuade the court to make a winding-up order on the just and equitable ground: a wider range of relevant considerations is available: Hawkes

v. Cuddy

[2010] BCC 597, at §104. Conversely, the fact that a plaintiff may be able to prove that there has been unfair prejudice to his interests as a member does not necessarily lead to the conclusion that it would be just and equitable to wind up the company, not least because the remedy under Article 155 gives the company its quietus whereas a buy-out order under Article 143 leaves the company intact. As such, the court's willingness to grant one remedy does not necessarily dictate the answer to the question whether it will be willing to grant the other. Accordingly, we reject Mr Tuckwell's argument (in §72 of his CSCA) that "If the conduct cannot justify a buy-out, it certainly cannot justify a winding up." 269. We have already referred, in §64 above, to the decision in *Westbourne Galleries* which established the principle that, in deciding whether to exercise its power to wind up a company on the just and equitable ground, the court will look behind the legal personality of a company and will take into account the true nature of the relationships between the individual corporators. Taking that approach, there may be circumstances in which the conduct of a controlling shareholder or director involves no breach of law, but nevertheless leads to the conclusion that it would be just and equitable to wind up the company. 270. The circumstances which may lead the court to reach such a conclusion cannot be exhaustively defined. It would be wrong to attempt any such definition. It would also be potentially misleading to adopt a rigidly category-based approach. Nevertheless, some themes emerge and some useful guidance can be derived from the decided cases which serve to illustrate the kind of situations in which the court has in the past been satisfied that a winding-up order is just and equitable. Justifiable loss of confidence & partiality 271. For example: a. It has been found that such an order can be made where there has been a justifiable loss of confidence in the probity of the management of a company, particularly where the controlling director treats the business as his own: see for example *Loch v. John Blackwood Ltd*

[1924] AC 783 , at 788, cited with approval in *Westbourne Galleries*, at 367F - G and again more recently in *Chu v. Lau*

[2020] UKPC 24 , at §24 and §90. b. It has also been held that a winding-up order can be made where a minority shareholder has justifiably lost confidence in the impartiality or probity of the company's management: see *Thomson v. Drysdale* [1925] SC 311, at 315. c. It has also been said that conduct deliberately calculated to 'freeze out' a minority shareholder,

driving him to sell his shares at an undervalue, is capable of justifying a winding-up order: see *Re Wondoflex Textiles Pty Ltd* [1951] VLR 458, at 468, citing *Re James Lumbers Co Ltd* [1926] 1 DLR 173, at 188. 272. We would add three observations on this line of authority which are relevant to the present appeal: a. First, it is important to recognise that *Loch v. John Blackwood* was not a quasi-partnership case, nor was it one in which there was any deadlock in management. Furthermore, although the facts of *Thomson v. Drysdale* and of *Wondoflex Textiles* might have justified a finding that they involved quasi-partnership companies, that was not the basis on which they were decided. All of these decisions were based on entirely general statements of principle that any shareholder in any company is entitled to expect its affairs to be managed with probity and in accordance with basic principles of fair dealing: see also *Baird v. Lees*

- (1924) SC 83, at 92, and *Re Sunrise Radio*, at §4. b. Second, the use of the word 'probity' in *Loch v. John Blackwood*, and its conjunction with the word 'impartiality' in *Thomson v. Drysdale*, were both deliberate and significant. The courts did not confine their observations to cases involving actionable breaches of a director's duty, or of actual dishonesty: see also *Westbourne Galleries*, at 379C
- E and 381H. A want of probity and a lack of impartiality are broader concepts than either breach of fiduciary duty or dishonesty, although they may well include both. In particular, the word 'probity' embraces concepts both of honesty and of decency. c. Third, the question whether any particular conduct constitutes a sufficient want of probity or lack of impartiality such as to justify a winding-up order on the just and equitable ground will always be context-specific: *Re San Imperial Corp Ltd* (No 2)
- (1980) HKC 463, at 467G - 468H. In other words, a plaintiff has no enforceable legal right to demand a winding-up order in circumstances where he has justifiably lost confidence in the probity or impartiality of management: but the court is entitled to take into account any such loss of confidence when exercising its judgment whether it is just and equitable to wind up the company." Our decision 89. Turning to the facts of this case, it appears to the Court that there are three questions that we need to ask ourselves: (i) Has Mr Abdallah lost confidence in the probity and impartiality of Mr Mirza to manage the Company? (ii) Is that loss of confidence justifiable? and (iii) Is it sufficient to prompt a just and equitable winding up of the Company? 90. In relation to the first issue there can be no doubt that, on any view, there has been a loss of confidence in the probity and impartiality of Mr Mirza. 91. It was clear from Mr Abdallah's evidence that, even before the Transaction, he had lost confidence in Mr Mirza's ability to manage the Company. 92. Secondly, was the loss of confidence justifiable? In our view it was justifiable bearing in mind the Transaction and the fact that it was deliberately concealed from him. Furthermore, Mr Abdallah was subsequently misled in 2015 and 2016 and led to believe, as least by implication, that he still had an interest in the Company and BSI when, in fact, he had neither. The meeting in Doha was little more than a charade, the Court accepting, as it did, that Mr Abdallah's account of what he was told by Mr Mirza at that time was more or less accurate. 93.

Thirdly, is Mr Abdallah's justifiable loss in confidence in Mr Mirza sufficient to prompt a just and equitable winding up? We found this question more difficult as if Mr Mirza is correct then by the middle of 2013 BSI had no value and the Company now has no tangible assets. Furthermore, to the extent that the Transaction in 2013 was not properly documented pursuant to the provisions of the Company's Articles, it is said that the 2020 ratification cures those defects. In our view, the 2020 ratification, although there is strong evidence of the will of the majority of the shareholders and, indeed, their opposition to any further investigation at this stage, is no answer to Mr Abdallah's application in these proceedings. Merely because the majority of the shareholders do not agree with Mr Abdallah, does not mean that he is prevented from pursuing the relief that he seeks in these proceedings. 94. It is also said against Mr Abdallah that he has failed to place before the Court sufficient evidence of the remedies that he thinks may be available to a liquidator acting on behalf of the Company. These will be issues of Qatari law upon which, it appears, no advice has yet been taken. 95. As to the nature of those remedies, it was submitted to us, on behalf of Mr Abdallah, that they may involve claims against Mr Mirza; claims against Detco to set aside the Transaction; claims against BSI on account of repayment of loans; claims against Detco for repayment of loans, and possibly claims against the beneficial owner of Detco. Advice may also be taken on claims against other shareholders and Mr Mirza in his capacity as a director. It was argued that the budget that Mr Abdallah has committed to cover the costs of professional insolvency practitioners is wholly inadequate and Mr Abdallah's benefit from any ultimate realisation would be slight. There is force in these arguments. 96. In response, Mr Abdallah says, firstly, as to the ratification of Mr Mirza's entering into the Transaction on behalf of the Company, this was not ratification under Article 74(2) of the Law as the authorisation or ratification was not unanimous. Ratification under Article 74(3) does not require unanimity. What is required is the passing of a resolution with the requisite majority at a time when the Company will be able to discharge its liabilities as they fall due, and where the vote of the director whose act or omission is to be ratified is disregarded in determining whether or not the resolution is passed. 97. The 2020 ratification *prima facie* satisfies these tests, as the requisite majority was secured; the Company was able to discharge its liabilities at the relevant time, and Mr Mirza did not vote. However, it is argued that, notwithstanding Article 74(3), there are breaches of duty by the director that are not ratifiable. It was accepted that ratification may present a hurdle to a liquidator pursuing Mr Mirza personally for breach of duty, but no more than that could be said at this time. Article 74 relief may not exclude pursuing a director for breach of his equitable duties, such as his fiduciary duty to the Company. Further, as noted by the Court of Appeal in *Financial Technology Ventures-v-ETFS Capital Limited and Tuckwell*

[2021] JCA 176, directors owe various duties to companies both under Article 74 of the Law and under the general law. An example of the latter is a director's duty to exercise their powers as such for the proper purpose for which those powers were conferred upon them. Further, as Gower's *Principles of Modern Company Law* (10th Edition 2016) says at

paragraph 60-124, there may be certain breaches of duty by a director that are not capable of being ratified. The example that is given is that a majority of shareholders 'may not by resolution expropriate to themselves company property, because the property of the company is something in which all the shareholders of the company have a 'pro rata' interest'. By analogy, it is argued in this case that the majority of shareholders chose to give away the assets of the Company to the owner of Detco but, nonetheless, those shareholders continued to have an interest in and/or benefit from BSI one way or another. It is said that Mr Rubie was, in effect, a shareholder in the Company and continued to be general manager of BSI; Mr Mirza, a majority shareholder at the time of the Transaction, continued to arrange meetings at, and represent, BSI; Mr Abdul Wahab (4% holding) remained a creditor of BSI, his son worked at BSI and he showed Mr Abdallah around the factory in 2016; Mr Haider ran a company called Capanama SA (12.2% holding) whose website, in 2019, said that Capanama continued to be an 'investor' in BSI; and as to the only remaining shareholder, the widow of Mr Al Khudhairi, she was happy to go along with the other shareholders, all of whom were known to each other. 98. Having considered the relevant authorities, Gower states: 'Beyond the proposition that ratification is not effective where it would amount to misappropriation, or expropriation, of corporate property, it is difficult to formulate any further limitations which command general consent'. 99. When considering whether or not Mr Abdallah's justifiable (as we have found) loss of confidence in Mr Mirza is sufficient to prompt a just and equitable winding up, we have also had regard to two particular issues which we were invited by counsel for Abdallah to consider, namely the proportionality of the order sought and delay. We think it is quite proper to consider these issues when determining whether or not we should make the order sought. Delay, of course, is a concern - these events occurred eight years ago. But, as we have accepted, Mr Abdallah was not told the truth about the Transaction until 2019. Mr Mirza and Mr Rubie were quite at liberty to tell Mr Abdallah the truth about the Transaction in 2013, 2016, 2017 and 2018. On each occasion they neglected to do so. Mr Rubie's suggestion, in evidence, that Mr Abdallah would often threaten him with Court proceedings rather bears out Mr Abdallah's case that he was not told about the Transaction at the time. Had he done so then Mr Abdallah would have undoubtedly initiated Court proceedings in Qatar or Jersey or both. 100. As to whether or not it is proportionate to make such an order, we gave anxious consideration to the financial situation of BSI at the time and whether or not it really is worth appointing a liquidator when there are so many uncertainties, as there are in this case, about the claims that a liquidator might pursue and the value of the assets given away in 2013. BSI continues to trade and expert evidence has been provided to the Court, supported by certain contemporaneous evidence, to the effect that the shares in BSI had value in 2013. The difficulty for the Company and Mr Mirza in opposing this application is that it is hard for the Court to place confidence on the assertions made today about the value of the Company and its shares in BSI in 2013 in circumstances where the Court has reached the conclusions it has about the credibility of Mr Mirza and Mr Rubie. 101. Furthermore, Mr Abdallah accepts that the funding for the liquidator will come exclusively from him and not other shareholders. 102. In the

circumstances we determined that it was appropriate to order that this Company be wound up on a just and equitable basis and that a liquidator be appointed. We invite the parties to address us further, by written submission if necessary, as to such further ancillary orders that the Court is invited to make. Authorities Companies (Jersey) Act Law 1991. Financial Technology Ventures and Ors v ETFS Capital Limited and Tuckwell

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[2021] JCA 176 Gower's Principles of Modern Company Law (10th Edition 2016). Page Last  
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